

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RANDY PALMER,

Petitioner,

V.

RONALD FRAKER, et al.,

Respondents.

No. C09-5703 RJB

**ORDER DENYING MOTION FOR
CERTIFICATE OF APPEALABILITY**

On May 7, 2010, this Court entered an Order Adopting Report and Recommendation Denying Writ of Habeas Corpus in the above referenced matter. Petitioner now seeks a certificate of appealability (COA) of that order.

The Report and Recommendation adopted by this Court concluded “that Mr. Palmer is not entitled to a COA with respect to any of the claims asserted in his petition because he has not demonstrated that jurists of reason could disagree with the district court’s resolution of his constitutional claims or could conclude the issues presented are adequate to deserve encouragement to proceed further.” Dkt 12. Having adopted the Report and Recommendation, this Court has already ruled that Petitioner is not entitled to a certificate of appealability.

The Antiterrorism and Effective Death Penalty Act (AEDPA) governs the right of a petitioner to appeal the denial of a writ of habeas corpus. Under 28 U.S.C. § 2253(c), a petitioner may not appeal the denial of a habeas corpus petition until the district court or the

1 Ninth Circuit issues a certificate of appealability. United States v. Asrar, 116 F.3d 1268 (9th Cir.
2 1997).

3 The district court should grant an application for a Certificate of Appealability only if the
4 petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §
5 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas
6 petitioner must make a showing that reasonable jurists could debate whether, or agree that, the
7 petition should have been resolved in a different manner or that the issues presented were
8 adequate to deserve encouragement to proceed further. Slack v. McDaniel, 529 U.S. 473
9 (2000). When the court denies a claim on procedural grounds, the petitioner must show that
10 jurists of reason would find it debatable whether the petition states a valid claim of the denial of
11 a constitutional right and that jurists of reason would find it debatable whether the district court
12 was correct in its procedural ruling. Slack at 484.

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14 Petitioner cannot satisfy the standards for issuance of a certificate of appealability. The
15 claims concerning the imposition of consecutive sentences are not debatable. See Oregon v. Ice,
16 555 U.S. ___, 129 S. Ct. 711, 172 L. Ed. 2d 517 (2009). Nor is the insufficiency of evidence
17 claim debatable. See Jackson v. Virginia, 443 U.S. 307, 319 (1979)

18
19 ACCORDINGLY;

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21 IT IS ORDERED:

22 Petitioner’s Request for a Certificate of Appealability [Dkt. 18] is **DENIED**.

23 DATED this 3rd day of June, 2010.

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ROBERT J. BRYAN
United States District Judge

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